

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

ST. REGIS MOHAWK TRIBE

Plaintiff,

-against-

GOVERNOR DAVID A. PATERSON

and

FRANKLIN COUNTY, NEW YORK

Defendants

**AFFIRMATION OF
DAVID B. ROBERTS IN
SUPPORT OF MOTION
TO DISMISS**

09-CV-0896
(NPM/GHL)

DAVID B. ROBERTS, being a duly licensed attorney in the State of New York and an Assistant Attorney General in the offices of Andrew M. Cuomo, Attorney General of the State of New York, does hereby affirm under penalties of perjury:

1. I am an Assistant Attorney General and appear in this action on behalf of Andrew M. Cuomo, Attorney General of the State of New York, attorney for Defendant Governor David A. Paterson. I submit this affirmation in support of the State Defendant's motion to dismiss this action.
2. Attached as Exhibit A is a true copy of the Complaint that was filed on behalf of the St. Regis Mohawk Tribe in this litigation on August 5, 2009. In the memorandum of law in support of the motion to dismiss that is submitted herewith, this exhibit is referenced as "Complaint."
3. Attached as Exhibit B is a true copy of the Amended Complaint filed on behalf of the Canadian St. Regis Band of Mohawk Indians, as well as certain members of the tribe, in 82-CV-783 (docket no. 13). In the memorandum of law in support of the motion to dismiss that is submitted herewith, this exhibit is referenced as "Cplt. I."

4. Attached as Exhibit C is a true copy of the Amended Complaint filed on behalf of the Canadian St. Regis Band of Mohawk Indians, as well as certain members of the tribe, in 82-CV-1114 (docket no. 5). In the memorandum of law in support of the motion to dismiss that is submitted herewith, this exhibit is referenced as “Cplt. II.”

5. Attached as Exhibit D is a true copy of the Complaint filed on behalf of the St. Regis Mohawk Tribe, by the St. Regis Mohawk Tribal Council, and the People of the Longhouse at Akwesasne, by the Mohawk Council of Chiefs, in 89-CV-829 (docket no. 1). In the memorandum of law in support of the motion to dismiss that is submitted herewith, this exhibit is referenced as “Cplt. III.”

6. Attached as Exhibit E is a true copy of the Amended Complaint in Intervention on behalf of the United States in 89-CV-829, 82-CV-1114, and 82-CV-783.

7. The actions referenced in paragraphs 3, 4, and 5 have been consolidated in the Northern District of New York, with Docket Number 82-CV-783 designated the lead case, and hereinafter are referenced collectively as the “St. Regis Land Claim.”

8. Attached as Exhibit F is a true copy of the Notice of motion for judgment on the pleadings pursuant to Rule 12(c) and supporting Memorandum of Law that was filed on behalf of the State Defendants in the St. Regis Land Claim on November 6, 2006. (Docket Entry No. 446).

9. Attached as Exhibit G is a true copy of the Notice of motion for judgment on the pleadings pursuant to Rule 12(c) and supporting Memorandum of Law that was filed on behalf of the non-State Defendants, including the County of Franklin, in the St. Regis Land Claim on November 6, 2006. (Docket Entry No. 447).

10. Attached as Exhibit H is a true copy of the Opposition to the motions for judgment on the pleadings pursuant to Rule 12(c), and Request to convert them to motions for summary judgment, filed on behalf of the St. Regis Tribe and the Mohawk Nation Council of Chiefs in the St. Regis Land Claim on July 13, 2007. (Docket Entry No. 470).

11. Attached as Exhibit I is a true copy of the Memorandum of Law in opposition to the motion for judgment on the pleadings pursuant to Rule 12(c) that was filed on behalf of the St. Regis Tribe and the Mohawk Nation Council of Chiefs in the St. Regis Land Claim on July 13, 2007. (Docket Entry No. 471).

12. Attached as Exhibit J is a true copy of a Statement of disputed material facts pursuant to N.D.N.Y. Local Rule 7.1(a)(3) that was filed on behalf of the St. Regis Tribe and the Mohawk Nation Council of Chiefs in the St. Regis Land Claim on July 13, 2007. (Docket Entry No. 472). 13. In the interest of brevity, the affidavits and exhibits that were submitted by the Plaintiffs in opposition to the Defendants' Rule 12(c) motion are not included with this motion, but are available as Docket Entries No. 474-2 through 474-43, filed on July 13, 2007.

14. Attached as Exhibit K is a true copy of the Joint Reply Memorandum of Law in support of the Defendants' motions for judgment on the pleadings pursuant to Rule 12(c) that was filed on behalf of the State and Municipal Defendants in the St. Regis Land Claim on December 5, 2007. (Docket Entry No. 498).

15. Attached as Exhibit L is a true copy of the Joint Surreply in Opposition to Defendants' motions for judgment on the pleadings that was filed on behalf of the St. Regis Tribe and the other Mohawk Plaintiffs in the St. Regis Land Claim on January 11, 2008. (Docket Entry No. 503).

16. Attached as Exhibit M is a true copy of an order staying all proceedings in the St. Regis Land claim, pending a determination of the appeal of Oneida Indian Nation v. State of New York, No. 07-2430, dated May 16, 2008. (Docket Entry No. 504).
17. Attached as Exhibit N is a true copy of Plaintiff's Notice of Motion and Memorandum of Law in Support of a Motion for an injunction pursuant to the All Writs Act, dated November 1, 2004. (Docket Entry No. 332).
18. Attached and marked as Exhibit O is a true copy of the Report-Recommendation issued by Magistrate Judge Lowe in the St. Regis Land Claim litigation, recommending denial of the Tribe's Motion for an injunction pursuant to the All Writs Act, dated December 6, 2004. (Docket Entry No. 347).
19. Attached and marked as Exhibit P is an Answer that was filed on behalf of the Plaintiff Tribe in one of the Franklin County Court proceedings which the Tribe sought to enjoin, regarding one Paul Thompson, In re Foreclosure of 1998 Tax Liens (Franklin County Court 11/18/04) (Index No. 2004-659), which was appended as Exhibit A to the Report-Recommendation issued by Magistrate Judge Lowe on December 6, 2004 in the St. Regis Land Claim litigation. (Docket Entry No. 347).
20. Attached and marked as Exhibit Q is a true copy of an Order by Judge McCurn dated January 12, 2005, adopting the December 6, 2004 Report-Recommendation and denying the Tribe's injunction motion without prejudice. (Docket Entry No. 359).
21. Attached and marked as Exhibit R is a true copy of a proposed Order to Show Cause and

Memorandum of Law in Support of a Motion for an injunction pursuant to the All Writs Act on behalf of non-State Defendants in the St. Regis Land Claim, dated March 9, 2009. (Docket Entry No. 508).

22. Attached and marked as Exhibit S is a true copy of Plaintiffs' Memorandum of Law in Opposition to Defendants' Motion for an injunction pursuant to the All Writs Act in the St. Regis Land Claim, dated March 25, 2009. (Docket Entry No. 516).

23. Attached and marked as Exhibit T is a true copy of a status report letter relating to the pending All Writs Act injunction application, with attachments, submitted on behalf of the non-State Defendants in the St. Regis Land Claim, dated August 10, 2009. (Docket Entry No. 521).

Dated: Albany, New York
October 30, 2009

s/ David B. Roberts

DAVID B. ROBERTS
Federal Bar Roll No. 102455